

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JIM MILLO #191192,

Petitioner,

File No. 2:08-CV-252

v.

HON. ROBERT HOLMES BELL

GREG McQUIGGIN,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on Petitioner Jim Millo's objections to the Magistrate Judge's January 6, 2009, Report and Recommendation ("R&R") recommending that Petitioner's § 2254 petition for writ of habeas corpus be dismissed with prejudice pursuant to Rule 4 of the Rules Governing § 2254 Cases, because it plainly appears from the petition and the attached exhibits that the petition is barred by the applicable statute of limitations. (Dkt. No. 8.) Petitioner filed objections to the R&R and a motion for partial summary judgment on January 22, 2009. (Dkt. Nos. 12, 13.)

This Court is required to make a de novo determination of those portions of the R&R to which objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Although the Magistrate Judge's R&R is reviewed de novo, this Court must review

the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner contends that the Magistrate Judge issued the R&R prematurely without affording him the opportunity for discovery. Petitioner also contends that his petition is not subject to the one-year limitations period because he is challenging cumulative changes in parole procedures that, taken together, violate the Ex Post Facto clause.

Summary dismissal is not only authorized, but required, by Rule 4 of the Rules Governing § 2254 Cases if it plainly appears from the petition that the petitioner is not entitled to relief. The Court agrees with the Magistrate Judge that it plainly appears from the petition that petitioner is not entitled to relief. The Magistrate Judge correctly summarized the nature of Petitioner's claim, correctly determined that 28 U.S.C. § 2244(d)(1)(D) provides the period of limitation, and correctly determined that Petitioner's claim is time-barred. Petitioner's objections to the R&R are without merit.

Because Petitioner's habeas petition is time-barred, the Court need not address his motion for partial summary judgment. Accordingly,

IT IS HEREBY ORDERED that Petitioner's objections to the R&R (Dkt. No. 12) are **DENIED**.

IT IS FURTHER ORDERED that the January 6, 2009, R&R (Dkt. No. 8) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Petitioner's motion for partial summary judgment (Dkt. No. 9) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**. *Slack v. McDaniel*, 529 U.S. 473 (2000).

Dated: June 29, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE